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FILE:

Office: TEXAS SERVICE CENTER

Date:

JAN 29 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(B)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a university. It seeks to classify the beneficiary as an outstanding professor pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(B). The petitioner seeks to employ the beneficiary in the United States as an assistant professor. The director denied the petition on September 26, 2002, having determined that the petitioner had not established that the beneficiary (1) was offered a tenured or tenure-track position, (2) has the required three years of teaching experience, and (3) is recognized internationally as outstanding in his academic field.

On October 23, 2002, the petitioner, through prior counsel [REDACTED] filed an appeal, stating that further documentation would be forthcoming within 60 days. The record contains no further submission from Mr. [REDACTED]. On July 21, 2003, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v), because the petitioner's appeal did not address the stated grounds for denial. The petitioner, through counsel, has filed a second appeal on August 22, 2003. We consider this appeal to be a motion, because appellate decisions are not subject to appeal, but they are subject to reopening or reconsideration on motion.

The materials and arguments submitted on motion do not address the AAO's summary dismissal of July 21, 2003. The AAO summarily dismissed the appeal due to the petitioner's failure to present substantive arguments or evidence during the time allowed for such submissions. The petitioner's motion contains arguments that should have been made at the appellate stage. If the petitioner does not or cannot overcome the grounds for summary dismissal, the petitioner cannot overcome this deficiency by revisiting the grounds for the underlying denial. The petitioner cannot, on motion, simply resume the appeal where it left off in October 2002, and the submission of documents and arguments that rightly should have been submitted on appeal cannot nullify the administrative decisions rendered since that time. The motion now at hand is not simply an extension of the initial appeal. The petitioner cannot begin the appeal process anew simply by hiring a new attorney. While the petitioner is free to change attorneys at any time, there is no requirement that this change of attorneys entitles the petitioner to extensions or other special considerations.

Counsel, like prior counsel, states that further materials will be forthcoming in 60 days. The motion addresses two of the three grounds underlying the original denial, and counsel states that additional time is necessary to study the third ground (regarding the beneficiary's international recognition or lack thereof). The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence or arguments in furtherance of a previously filed motion. Filing a motion does not secure an open-ended period to supplement the record.

Furthermore, as the petitioner was advised on the cover sheet of the AAO's dismissal notice, 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or to reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The petitioner cannot circumvent this requirement by filing a skeletal motion within the 30-day period and supplementing the motion at a later date.

Because the petitioner did not submit a comprehensive motion during the time allotted, and because the petitioner has not overcome or even contested the AAO's stated grounds for summarily dismissing the underlying appeal, the AAO sees no valid grounds to disturb the denial of the petition or the dismissal of the appeal. Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the requirements of a motion to reopen or to reconsider shall be dismissed.

ORDER: The motion is dismissed.